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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

DD-25017

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on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Application Number

10/542,557

Filed

11/28/2005

First Named Inventor

Bodo W. Lambertz

Art Unit

3765

Examiner

Hoey, Alissa L

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 19,369

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

  
Signature

Seymour Rothstein

Typed or printed name

(312) 580-1180

Telephone number

August 27, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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DD-25017 (150300-8)

Via Express Mail Label No.: EM 125708190 US  
PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Bodo W. Lambertz	)	Group Art Unit: 3765
		)	
Serial No.:	10/542,557	)	Confirmation No.: 7025
		)	
Filed:	November 28, 2005	)	Examiner: Hoey, Alissa L
		)	
For:	SOCK	)	
		)	

**PRE-TRIAL BRIEF REVIEW REQUEST**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Reconsideration of the Final Rejection of Claims 1-17 and 21-23 is respectfully requested.

Claims 1, 3, 5-7, 10-12, 14, 16, and 17 have been rejected as being anticipated by Lambertz 6,286,151. Applicant submits that each of the claims remaining in this application patentably distinguishes over Lambertz, which is a patent by the present inventor. Claim 1 recites that the sock has a foot portion and a shaft portion. The foot portion has a toe area, a heel area and a tread area between the toe area and the heel area. As clearly seen in the drawing, the tread area is on the bottom of the sock. The sock has an air channel (25) extending from the shaft portion to the tread area and at least one climate channel (26) in the tread area (13) communicating with the air channel (25) for removing moisture from the tread area when the sock is worn for athletic activities.

Comparing the sock of the Lambertz patent with the sock of the present invention, it is seen that the present invention is not disclosed by Lambertz. There is no teaching in Lambertz of a climate channel in the tread area of the sock. The Examiner has not pointed to a climate

channel in the tread area of Lambertz and cannot do so, since there is none. Lambertz discloses the arrangement of an air channel proceeding from the sole of the foot up to the band area of the sock, but fails to arrange one or more climate channels in the tread area of the sock which are connected to the air channels. Therefore, the Lambertz patent is not able to promote the conveying of moisture that occurs in the tread area of the sole. The Lambertz patent does not anticipate Claim 1. Claims 3, 5-7, 10-12, 14, 16, and 17 are based upon 1 and should be allowed together with Claim 1.

Claims 2, 4, 8, 9, 13, 15, and 21-23 were rejected as being unpatentable over Lambertz in view of Dahlgren under 35 U.S.C. 103. Comparing the sock of Dahlgren with that of the present invention, it can be seen that the technical features are different. First, Dahlgren does not teach the use of any kind of channel and certainly not an air channel that extends from the sole up to the cuff of the sock. Dahlgren uses rings and there is no indication in Dahlgren that the rings 33 are the same or similar to the climate channels 26 of the present invention. The rings only create a wick action to transfer the moisture to the leg portion. Second, in Dahlgren, moisture is transported axially from the toe portion 21 along the foot portion 10b to the leg portion 10a. In contrast in the present invention the climate channels 26 transport moisture to the connected air channels 25 up to the band 21.

As for claim 4, the Examiner erroneously construes Lambertz. Lambertz does not show a curved shape in the tread area. Lambertz does not show the tread area in Fig. 8. Similarly as to claim 21 the Examiner misconstrues Lambertz. Climate channel 14 is not in the tread area. Central channel 3, not identified in Fig. 8, is not in the tread area of the sock.

Since Lambertz does not disclose climate channels in the tread area of the sock and Dahlgren does not disclose channels, but rings, that are crossed by moisture but not through which moisture flows, the combination of the cited art would not produce the present invention. The present invention is able to create an air circulation in the shoe because of the connection of the air channels 25 and the climate channels 26. This circulation improves the climate within the shoe. Therefore, the sock of the present invention not only enables moisture to escape from the shoe, but to supply fresh air into the shoe and into the tread area. Further, given a realistic appraisal of the teachings of the Lambertz patent and Dahlgren, there is no reason to combine the

two patents. Even when combined as proposed by the Examiner the present invention would not result. The Examiner has misconstrued Lambertz and has not met her burden of presenting a prima facie case of obviousness. Claims 2, 4, 8, 9, 13, 15, and 21-23 are considered to be patentable over the combination of Lambertz and Dahlgren for the reasons stated above.

Patents based upon applications corresponding to the present application have been granted in Australia (AU 2004206701B2), China (ZL200480002550), and the European Union (EP1585397). While it is recognized that different standards may be applicable to patentability in different jurisdictions, the patent standards in the European Patent Office are high. The claims of the European Patent are broad. The fact that three patents have now been granted lends credence to applicant's arguments that the present invention is both novel and patentable.

While the Examiner has apparently chosen to ignore actions from foreign patent offices, it is noted that the USPTO has established a 21<sup>st</sup> Century Strategic Plan to transform the USPTO into a more quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One purpose of this Strategic Plan was to share search results from one IP office with other IP offices. By relying on the search results obtained via these partnerships with other IP offices, the USPTO can reduce duplication of effort and decrease workload. The Australian Patent Office and the European Union are partners under the Patent Prosecution Highway Pilot Program.

To participate in the Patent Prosecution Highway program, an applicant must have a ruling from a participant examining authority that at least one claim in an application is patentable. Clearly then some credence must be given to a decision as to claim novelty from a participant examining authority by the US Patent Examiner. The present application contains claims that specifically define the invention and are commensurate with the allowed claims of the Australian and EPO patent. Applicant urges that the fact that two sister patent examining authorities have allowed claims of a similar or greater scope than the present claims should be recognized in examination of the present application and is a factor favoring allowance of the present application.

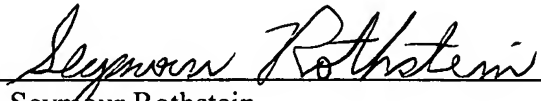
Serial No.---- 10/542,557

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Early and favorable reconsideration and allowance of the present application are solicited.

Respectfully submitted,

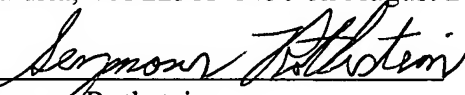
Date: August 27, 2009

By:   
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Seymour Rothstein